

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA
JULIA HARUMI MASS (SBN 189649)
WILLIAM S. FREEMAN (SBN 82002)
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493
Facsimile: (415) 255-8437
Email: jmass@aclunc.org
wfreeman@aclunc.org

COOLEY LLP
MARTIN S. SCHENKER (SBN 109828)
NATHANIEL R. COOPER (SBN 262098)
ASHLEY K. CORKERY (SBN 301380)
TREVOR M. KEMPNER (SBN 310853)
101 California Street, 5th Floor
San Francisco, CA 94111
Telephone: (415) 693-2000
Facsimile: (415) 693-2222
Email: mschenker@cooley.com
ncooper@cooley.com
acorkery@cooley.com
tkempner@cooley.com

ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
JUDY RABINOVITZ*
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 549-2660
Facsimile: (212) 549-2654
E-mail: jrabinovitz@aclu.org

ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
STEPHEN B. KANG (SBN 292280)
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 343-0770
Facsimile: (212) 395-0950
E-mail: skang@aclu.org

Attorneys for Petitioners/Plaintiffs, Lorenza Gomez, Ilsa Saravia, and Wilfredo Velasquez, on behalf of themselves individually and others similarly situated.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Lorenza Gomez, as next friend for J.G., a
minor, and on her own behalf, et al.,

Petitioners/Plaintiffs, on behalf of
themselves individually and others
similarly situated,

v.

Jefferson B. Sessions, et al.,

Respondents/Defendants.

Case No. 3:17-cv-03615-VC

**[PROPOSED] STIPULATED PROTECTIVE
ORDER FOR LITIGATION INVOLVING
HIGHLY SENSITIVE CONFIDENTIAL
INFORMATION**

IMMIGRATION ACTION

Judge: Hon. Vince Chhabria

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
 3 proprietary, or private information for which special protection from public disclosure and from use
 4 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties
 5 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
 6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
 7 discovery and that the protection it affords from public disclosure and use extends only to the limited
 8 information or items that are entitled to confidential treatment under the applicable legal principles.
 9 The parties further acknowledge that – except as set forth in Section 12.3(a) and (b), below – this
 10 Stipulated Protective Order does not entitle them to file confidential information under seal; Civil
 11 Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied
 12 when a party seeks permission from the court to file material under seal. Defendants also note that
 13 disclosure and discovery in this action may involve information covered by various statutory and
 14 regulatory confidentiality provisions, which may limit their disclosure in this action (such as 8 U.S.C.
 15 §§1186a(c)(4), 1254a(c)(6), 1304(b), 1367, 1160, and 1202, 1255a(c)(4), (5); 1104(c)(5) of the LIFE
 16 Act of 2000, Pub. Law 106-553 (December 21, 2000); 8 C.F.R. §§ 208.6, 208.16, 208.17, 210.2(e),
 17 214.11(e), 214.14(e), 216.5(e)(3)(viii), 236.6, 244.16, 245a.2(t), 245a.3(n), 245a.21, 1003.27(b)-(d),
 18 1003.46, 1208.6, 1208.16, and 1208.17, and 22 U.S.C. § 7105(c)(1)(C)).

19 **2. DEFINITIONS**

20 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information
 21 or items under this Order.

22 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
 23 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
 24 Civil Procedure 26(c) or pursuant to applicable laws, statutes or regulations such as the Privacy Act,
 25 5 U.S.C. § 552a: (a) PI belonging or relating to Plaintiffs or the Named Children; (b) PI belonging or
 26 relating to any other minor children or their family members that are disclosed in discovery; (c) the
 27 alien numbers, social security numbers, tax identification numbers, passport numbers, driver’s licenses
 28 numbers, and any similar numbers assigned to an individual by a federal/national, state, or local

1 government of the United States or any other country of any person; (d) Government records that
 2 contain tactical information not available to the general public that, if in the wrong hands, could be
 3 adversely used against law enforcement by non-law abiding groups or individuals; (e) sensitive
 4 information about Defendants' internal investigations, staffing, priorities, resources, intelligence
 5 and/or methods, which is law enforcement sensitive and should not be released to the public; (f)
 6 sensitive information related to minors, family members, or sponsors the release of which could
 7 constitute an invasion of privacy, including case manager notes, clinician notes, psychological
 8 evaluations, medical records, reunification packages, and home study reports; (g) Information
 9 contained in or pertaining to: an individual's asylum, statutory withholding of removal, refugee, or
 10 Convention Against Torture claims or applications, or credible fear or reasonable fear determinations;
 11 (h) Information which relates to an alien who is the beneficiary of an application for relief under
 12 paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act [8 U.S.C.
 13 1101(a)(15)(T), (U), (51)] or section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)]; information
 14 contemplated by 8 U.S.C. § 1186a(c)(4)(C) concerning any abused alien spouse or child, including
 15 information regarding the whereabouts of such spouse or child (see 8 C.F.R. §§ 216.5(e)(1)(viii) and
 16 1216(e)(3)(viii)); and (i) all other information that any party contends in good faith contain
 17 confidential information that any party would not ordinarily disclose and which should be protected
 18 from disclosure.

19 2.3 Counsel (without qualifier): Counsel of Record and Individual Counsel (as well as their
 20 support staff).

21 2.5 Designating Party: a Party or Non-Party that designates information or items that it
 22 produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "HIGHLY
 23 CONFIDENTIAL – ATTORNEYS' EYES ONLY".

24 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
 25 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
 26 transcripts, and tangible things), that are produced or generated in disclosures or responses to
 27 discovery in this matter.

28 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the

litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party, and (3) at the time of retention, is not anticipated to become an employee of a Party.

2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means, including information which, if disclosed, could result in a party or material witness deciding not to testify out of fear of adverse immigration or criminal consequences.

2.9 Immigration Counsel: attorneys who have been retained by one of the Named Children or a member of the Plaintiff Class in connection with matters affecting such person’s immigration status.

2.10 Named Children: the minor children identified as J.G., A.H. and F.E in the First Amended Petition for Writ of Habeas Corpus and Class Action Complaint for Injunctive and Declaratory Relief filed in this action on August 11, 2017 (Dkt. No. 31) and additional children, if any, that may be added as proposed class representatives through the course of litigation.

2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.12 Counsel of Record: attorneys who have appeared as counsel of record in this action on behalf a party to this action.

2.13 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Counsel of Record (and their support staffs).

2.14 PI: personal information, including but not limited to the first and last names, date or birth, place of birth, immigration status, citizenship, travel to and from the United States, phone number, address, and photograph of any person.

2.15 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.16 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,

or retrieving data in any form or medium) and their employees and subcontractors.

2.17 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.18 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. Aggregate information that does not permit the identification of the particular individuals to whom the information relates is not protected even if it is derived from source documents that are designated “Confidential” or “Highly Confidential.” Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law; or (3) the termination of any settlement agreement that is signed by the parties and approved by the Court.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the

1 material, documents, items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
4 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
5 encumber or retard the case development process or to impose unnecessary expenses and burdens on
6 other parties) expose the Designating Party to sanctions.

7 If it comes to a Designating Party's attention that information or items that it designated for
8 protection do not qualify for protection at all or do not qualify for the level of protection initially
9 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
10 mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
12 e.g., the second and third paragraphs of Section 5.2(a) below), or as otherwise stipulated or ordered,
13 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
14 designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
17 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
18 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each
19 page that contains protected material. If only a portion or portions of the material on a page qualifies
20 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
21 appropriate markings in the margins) and must specify, for each portion, the level of protection being
22 asserted.

23 A Party or Non-Party that makes original documents or materials available for inspection need
24 not designate them for protection until after the inspecting Party has indicated which material it would
25 like copied and produced. During the inspection and before the designation, all of the material made
26 available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
27 ONLY." After the inspecting Party has identified the documents it wants copied and produced, the
28 Producing Party must determine which documents, or portions thereof, qualify for protection under

1 this Order. Then, before producing the specified documents, the Producing Party must affix the
 2 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 3 ONLY”) to each page that contains Protected Material. If only a portion or portions of the material on
 4 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
 5 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of
 6 protection being asserted.

7 Additionally, a Receiving Party may designate a document produced by another party as
 8 “CONFIDENTIAL” if it believes in good faith that the document contains Protected Material (for
 9 example, where a Producing Party fails to designate a document containing PI belonging to one of the
 10 Named Children as “CONFIDENTIAL”). The Receiving Party shall do so by affixing the legend
 11 “CONFIDENTIAL” to each page that contains protected material and delivering copies to Counsel of
 12 Record for all parties. Notwithstanding the foregoing, the parties shall endeavor in good faith to
 13 designate, prior to production, documents that they believe contain Protected Material so that the
 14 burden of designating such documents does not fall on the Receiving Party or Parties.

15 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 16 Designating Party identify on the record, before the close of the deposition, hearing, or other
 17 proceeding, all protected testimony and specify the level of protection being asserted. When it is
 18 impractical to identify separately each portion of testimony that is entitled to protection and it appears
 19 that substantial portions of the testimony may qualify for protection, the Designating Party may invoke
 20 on the record (before the deposition, hearing, or other proceeding is concluded) a right to have up to
 21 21 days after receiving the deposition or other hearing transcript to identify the specific portions of the
 22 testimony and exhibits for which protection is sought and to specify the level of protection being
 23 asserted. Only those portions of the testimony that are appropriately designated for protection within
 24 the 21 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a
 25 Designating Party may specify, at the deposition or up to 21 days after receiving the transcript if that
 26 period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or
 27 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

28 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or

1 other proceeding to include Protected Material so that the other parties can ensure that only authorized
 2 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are
 3 present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way
 4 affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 5 ONLY.”

6 Transcripts containing Protected Material shall have an obvious legend on the title page that
 7 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
 8 (including line numbers as appropriate) that have been designated as Protected Material and the level
 9 of protection being asserted by the Designating Party. The Designating Party shall inform the court
 10 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period
 11 for designation shall be treated during that period as if it had been designated “HIGHLY
 12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
 13 expiration of that period, the transcript shall be treated only as actually designated.

14 (c) for information produced in some form other than documentary and for any other tangible
 15 items, that the Producing Party affix in a prominent place on the exterior of the container or containers
 16 in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
 17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions of the information
 18 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
 19 portion(s) and specify the level of protection being asserted.

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 21 designate qualified information or items does not, standing alone, waive the Designating Party’s right
 22 to secure protection under this Order for such material. Upon timely correction of a designation, the
 23 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
 24 the provisions of this Order.

25 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 27 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
 28 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,

1 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
 2 confidentiality designation by electing not to mount a challenge promptly after the original designation
 3 is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
 5 providing written notice of each designation it is challenging and describing the basis for each
 6 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite
 7 that the challenge to confidentiality is being made in accordance with this specific paragraph of the
 8 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the
 9 process by conferring directly (in voice to voice dialogue; other forms of communication are not
 10 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must
 11 explain the basis for its belief that the confidentiality designation was not proper and must give the
 12 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
 13 and, if no change in designation is offered, to explain the basis for the chosen designation. A
 14 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this
 15 meet and confer process first or establishes that the Designating Party is unwilling to participate in the
 16 meet and confer process in a timely manner.

17 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 18 intervention, the Designating Party shall seek relief under Paragraph 17 of Judge Chhabria's Civil
 19 Standing Order.¹

20 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
 21 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
 22 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
 23 Designating Party has waived the confidentiality designation by failing to file a motion to retain
 24 confidentiality as described above, all parties shall continue to afford the material in question the level
 25 of protection to which it is entitled under the Producing Party's designation until the court rules on the
 26 challenge.

27
 28 ¹ <http://www.cand.uscourts.gov/vcorders>.

1 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 3 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 4 defending, or attempting to settle this litigation, and shall not be used by anyone, subject to the terms
 5 of this agreement, for any purpose outside of this litigation or any other proceeding by or between the
 6 parties. Without limiting the generality of the foregoing sentence, no one subject to this Protective
 7 Order shall use Protected Material obtained in this litigation to retaliate against, intimidate, report or
 8 refer an individual to any governmental authorities, discriminate against any individual in any manner,
 9 or harass any other party or witness, relatives of any other party or witness, including domestic partners
 10 of a party or witness; or any individuals associated with the parties in any way. Such Protected Material
 11 may be disclosed only to the categories of persons and under the conditions described in this Order.
 12 When the litigation has been terminated, a Receiving Party must comply with the provisions of Section
 13 13 below (FINAL DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a location and in a
 15 secure manner that ensures that access is limited to the persons authorized under this Order.

16 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
 17 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 18 information or item designated “CONFIDENTIAL” only to:

19 (a) the Receiving Party’s Counsel of Record, as well as employees of said Counsel of Record
 20 to whom it is reasonably necessary to disclose the information for this litigation;

21 (b) where the information pertains to one of the Named Children or a member of the Plaintiff
 22 Class, the Individual Counsel for such person;

23 (c) the officers, directors, and employees of the Receiving Party to whom disclosure is
 24 reasonably necessary for this litigation;

25 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
 26 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
 27 (Exhibit A);

28 (e) the court and its personnel;

(f) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Counsel of Record, as well as employees of said Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) where the information pertains to one of the Named Children or a member of the Plaintiff Class, the Individual Counsel for such person;

(c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been followed;

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

1 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
 2 ATTORNEYS’ EYES ONLY” Information or Items to Experts.

3 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a
 4 Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has
 5 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph
 6 7.3(c) first must make a written request to the Designating Party that (1) identifies the general
 7 categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the
 8 Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert
 9 and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current
 10 resume, (4) identifies the Expert’s current employer(s), and (5) identifies (by name and number of the
 11 case, filing date, and location of court) any litigation in connection with which the Expert has offered
 12 expert testimony, including through a declaration, report, or testimony at a deposition or trial, during
 13 the preceding five years.

14 (b) A Party that makes a request and provides the information specified in the preceding
 15 respective paragraphs may disclose the subject Protected Material to the identified Expert unless,
 16 within 14 days of delivering the request, the Party receives a written objection from the Designating
 17 Party. Any such objection must set forth in detail the grounds on which it is based.

18 (c) A Party that receives a timely written objection must meet and confer with the Designating
 19 Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven
 20 days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to
 21 the Expert may seek relief under Paragraph 17 of Judge Chhabria’s Civil Standing Order. Any such
 22 request for relief must describe the circumstances with specificity, set forth in detail the reasons why
 23 the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would
 24 entail, and suggest any additional means that could be used to reduce that risk.

25 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of
 26 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
 27 outweighs the Receiving Party’s need to disclose the Protected Material to its Expert.
 28

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
 2 **LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation that compels
 4 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY
 5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of
 7 the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
 9 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
 10 Order. Such notification shall include a copy of this Stipulated Protective Order; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating
 12 Party whose Protected Material may be affected.²

13 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
 14 court order shall not produce any information designated in this action as “CONFIDENTIAL” or
 15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court
 16 from which the subpoena or order issued, unless the Party has obtained the Designating Party’s
 17 permission. The Designating Party shall bear the burden and expense of seeking protection in that
 18 court of its confidential material – and nothing in these provisions should be construed as authorizing
 19 or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

20 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
 21 **LITIGATION**

22 (a) The terms of this Order are applicable to information produced by a Non-Party in this
 23 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 24 EYES ONLY”. Such information produced by Non-Parties in connection with this litigation is
 25 protected by the remedies and relief provided by this Order. Nothing in these provisions should be
 26 construed as prohibiting a Non-Party from seeking additional protections.

27 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-

28 ² The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

1 Party's confidential information in its possession, and the Party is subject to an agreement with the
 2 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

3 1. promptly notify in writing the Requesting Party and the Non-Party that some or
 4 all of the information requested is subject to a confidentiality agreement with a Non-Party;

5 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order
 6 in this litigation, the relevant discovery request(s), and a reasonably specific description of the
 7 information requested; and

8 3. make the information requested available for inspection by the Non-Party.

9 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days
 10 of receiving the notice and accompanying information, the Receiving Party may produce the Non-
 11 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
 12 protective order, the Receiving Party shall not produce any information in its possession or control
 13 that is subject to the confidentiality agreement with the Non-Party before a determination by the court.³
 14 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking
 15 protection in this court of its Protected Material.

16 (d) This Section 9 shall not require any party to provide notice prior to releasing personally
 17 identifiable information belonging to non-parties that is not subject to a confidentiality agreement. To
 18 the extent the disclosure of such information could be prohibited by the Privacy Act, the Privacy Act
 19 provides, as an exception, that such records may be released "pursuant to the order of a court of
 20 competent jurisdiction." 5 U.S.C. § 552a(b)(11). The entry of this Stipulated Protective Order
 21 qualifies as such an order and provides a basis for the release of such documents and records pursuant
 22 to the Privacy Act, and insulates the Producing Party from liability for improper disclosure. *See Id.*
 23 § 552a(g)(1). The Producing Party shall designate such materials "CONFIDENTIAL" or "HIGHLY
 24 CONFIDENTIAL – ATTORNEYS' EYES ONLY," as appropriate.

25
 26
 27 ³ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights
 28 of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this
 court.

1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
4 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
6 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
7 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be
8 Bound” that is attached hereto as Exhibit A.

9 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
10 **MATERIAL**

11 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
12 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
13 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
14 modify whatever procedure may be established in an e-discovery order that provides for production
15 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
16 parties reach an agreement on the effect of disclosure of a communication or information covered by
17 the attorney-client privilege or work product protection, the parties may incorporate their agreement
18 in the stipulated protective order submitted to the court.

19 **12. MISCELLANEOUS**

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
21 its modification by the court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
23 no Party waives any right it otherwise would have to object to disclosing or producing any
24 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
25 Party waives any right to object on any ground to use in evidence of any of the material covered by
26 this Protective Order.

27 12.3 Filing Protected Material.

28 (a) Without written permission from the Designating Party or a court order secured after

appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Production of Protected Material shall not constitute a waiver of any applicable privilege. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, private, protectable as a trade secret, or otherwise entitled to protection under the law. If a request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the filing Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court.

(b) Notwithstanding the foregoing, the Named Children shall be referred to in any paper or pleading filed in this action by the initials J.G., A.H. or F.E., as appropriate, and all references to true first and last names of the Named Children shall be redacted from all exhibits, papers and pleadings without need for a sealing order from the Court. It is understood and agreed by the parties and the court that the true first and last names of the Named Children qualify for filing under seal under Civil Local Rule 79-5. To the extent that any other minor children, including but not limited to members of the Plaintiff Class, are referred to by name in any paper or pleading filed in this action, their names shall be referenced by initials in the same manner.

13. **FINAL DISPOSITION**

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material.

1 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion
2 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and
3 trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if
4 such materials contain Protected Material. Any such archival copies that contain or constitute
5 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2
3 DATED: 9/15/17

/s/ Martin S. Schenker

4 Martin S. Schenker
5 Attorneys for Petitioners/Plaintiffs

6 DATED: 9/15/17

/s/ Sarah B. Fabian

7 Sarah B. Fabian
8 Attorneys for Defendants
9 Jefferson B. Sessions, Attorney General of the United
10 States; Thomas E. Price, M.D., Secretary of the
11 Department of Health and Human Services of the United
12 States; Steven Wagner, Acting Assistant Secretary of the
13 Administration for Children and Families; Scott Lloyd,
14 Director of the Office of Refugee Resettlement of the
15 United States; Elicia Smith, Federal Field Specialist of
16 the Office of Refugee Resettlement of the United States;
17 Elaine Duke, Acting Secretary of the Department of
18 Homeland Security of the United States; Thomas D.
19 Homan, Acting Director of U.S. Immigration and
20 Customs Enforcement; James McCament, Acting
21 Director of U.S. Citizenship and Immigration Services

17 DATED: 9/15/17

/s/ Philip Pogledich

18 Philip Pogledich
19 Attorneys for Defendant
20 Brent Cardall, Chief Probation Officer of Yolo County

21 DATED: 9/15/17

/s/ Melissa A. Jones

22 Melissa A. Jones
23 Attorneys for Defendant
24 Jose Esquivel, Interim Program Director, BCFS Health
25 and Human Services

26 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

27 DATED: September 18, 2017

~~2018~~

28 
District Judge Vince Chhabria

ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3) regarding signatures, I attest under penalty of perjury that concurrence in the filing of this document has been obtained from the other signatories.

Dated: September 15, 2017

COOLEY LLP

/s/ Martin S. Schenker

Martin S. Schenker

Attorneys for Petitioners/Plaintiffs

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____, 2018 in the case of *Gomez, et al. v. Sessions, et al.*, Case No. 3:17-cv-03615-VC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____